



## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[BLM\_HQ\_FRN\_MO4500170190]

### Notice of Intent to Prepare an Environmental Impact Statement to Analyze the Potential Environmental Effects from Maintaining Secretary Jewell's Coal Leasing Moratorium

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and consistent with direction from the U.S. District Court of Montana, the Bureau of Land Management (BLM) intends to prepare an environmental impact statement (EIS) to analyze the potential environmental effects from maintaining or revoking former Secretary of the Interior Sally Jewell's coal leasing moratorium. This notice begins the process of defining the scope of the EIS by providing background on the Federal coal program and the direction received from the United States District Court for the District of Montana in *Citizens for Clean Energy, v. U.S. Dep't of the Interior*. With this notice, the BLM also solicits public comments for consideration in establishing the scope and content of the EIS.

**DATES:** The BLM invites interested agencies, States, Tribes, local governments, industry, organizations, and members of the public to submit comments or suggestions to assist in identifying significant issues that should be included in the scope of BLM's review of the potential environmental impacts from maintaining or revoking former Secretary Jewell's coal leasing moratorium.

The BLM will consider all written comments received or postmarked during the public comment period, which will close on [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit written comments by the following methods:

- Website: <https://eplanning.blm.gov/eplanning-ui/project/2024545/510>. This is the preferred method of commenting.
- Email: [BLM\\_HQ\\_320\\_CoalProgramReview@blm.gov](mailto:BLM_HQ_320_CoalProgramReview@blm.gov).
- Mail, personal, or messenger delivery: National Coal Program Review, 1849 C Street NW, Room 5622, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Timothy Barnes, Acting Chief, Division of Solid Minerals, telephone: 541-416-6858, email: [tbarnes@blm.gov](mailto:tbarnes@blm.gov).

Individuals in the United States who are deaf, blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** The BLM will prepare an EIS to analyze the potential environmental effects from maintaining or revoking former Secretary Jewell's coal leasing moratorium, as ordered by the U.S. District Court for the District of Montana in *Citizens for Clean Energy, v. U.S. Dep't of the Interior*, 4:17-cv-00042-BMM (D. Mont. 2022).<sup>1</sup> The court's decision is related to the environmental analysis that the BLM previously prepared to assess lifting a Federal coal leasing moratorium established on January 15, 2016, by then Secretary of the Interior Sally Jewell. Secretary Jewell

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<sup>1</sup> The Intervenor-Appellants, the National Mining Association, State of Wyoming and State of Montana, appealed this decision on October 7, 2022, and October 11, 2022, respectively. *Citizens for Clean Energy v. Dep't of the Interior*, Civ. No. 22-35789 (9th Cir.).

established the moratorium through Secretary's Order No. 3338 (Jewell Order), which directed the BLM to conduct a programmatic review of the Federal coal program through preparation of an EIS under NEPA. On March 29, 2017, then former Secretary of the Interior Ryan Zinke issued Secretary's Order No. 3348 (Zinke Order), which revoked the Jewell Order, halted preparation of the EIS, and lifted the moratorium on Federal coal leasing.

## **Background**

Under the Mineral Leasing Act of 1920 (MLA), as amended, 30 U.S.C. 181 *et seq.*, and the Mineral Leasing Act for Acquired Lands of 1947 (MLAAL), as amended, 30 U.S.C. 351 *et seq.*, the BLM is responsible for leasing Federal coal and regulation of the development of that coal on approximately 570 million acres of the 700 million acres of mineral estate that is owned by the Federal Government. This responsibility encompasses Federal mineral rights on Federal lands and Federal mineral rights located under surface lands with non-Federal ownership. Under the authority of the MLA and MLAAL, the BLM administers leasing and monitors coal production. Other Departmental bureaus, in particular the Office of Surface Mining Reclamation and Enforcement (OSMRE) and the Office of Natural Resources Revenue (ONRR), also take actions related to coal mining on Federal lands. The OSMRE, and those States that have regulatory primacy under the Surface Mining Control and Reclamation Act of 1977, permit coal mining and reclamation activities, and monitor reclamation and reclamation bonding actions. The ONRR collects and audits all payments required under the lease, including bonus bids, royalties, and rental payments, and distributes those funds between the Federal Treasury and the States where coal resources are located.

The Jewell Order imposed a moratorium on the issuance of new Federal coal leases for thermal coal, with limited exceptions, until completion of the EIS.

On March 29, 2017, the Zinke Order implemented Executive Order (E.O.) 13783, which was entitled, “Promoting Energy Independence and Economic Security,” by rescinding the Jewell Order. Immediately thereafter, Citizens for Clean Energy, Ecocheyenne, Montana Environmental Information Center, Center for Biological Diversity, Defenders of Wildlife, Sierra Club, WildEarth Guardians, and the Northern Cheyenne Tribe filed a lawsuit in the U.S. District Court for the District of Montana asserting that the issuance of the Zinke Order required an environmental analysis in compliance with NEPA. Additionally, the States of California, New York, New Mexico, and Washington also filed suit and the Court consolidated the cases. The National Mining Association and the States of Wyoming and Montana intervened.

On April 19, 2019, the Court held that the Zinke Order was a final agency action that triggered the need to comply with NEPA, requiring the Department to conduct an appropriate environmental review of that action. To comply with the Court’s Order, the BLM released an environmental assessment (EA) for public comment on May 22, 2019, and published the final EA and a Finding of No Significant Impact (FONSI) on its website on February 26, 2020. Shortly thereafter, the Plaintiffs amended their complaints to challenge the scope and content of the EA.

On January 20, 2021, President Biden issued E.O. 13990, entitled, “Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” revoking E.O. 13783. On April 16, 2021, Secretary Haaland rescinded the Zinke Order through Secretary’s Order 3398, but did not reinstate the Federal coal leasing moratorium.

On August 12, 2022, the Court vacated and remanded the EA and associated FONSI and reinstated “[t]he coal leasing program moratorium established by the Jewell Order...until the completion of sufficient NEPA review analyzing revocation of the moratorium.” Order at 19. The Court determined that the EA’s analysis failed “to

consider all direct, indirect, and cumulative impacts of re-starting the Federal coal-leasing program.” Order at 13. Further, the Court held that the BLM should have considered “a potential alternative that provided a baseline of an indefinite moratorium” rather than limiting the EA’s analysis to those leases granted during the estimated Programmatic EIS timeline providing that the “BLM’s analysis should have considered the effect of restarting coal leasing from a forward-looking perspective, including connected actions.” *Id.* The Court directed the “BLM [to] perform NEPA analysis that considers the full scope of the Zinke Order’s effect on all then-pending lease applications, and other connected, cumulative, or similar actions.” Order at 17. In October 2022, Intervenor-Defendants appealed the decision to the U.S. Court of Appeals for the Ninth Circuit.

### **Public Scoping Process**

All public scoping comments must be submitted by email or by mail to the addresses listed under **ADDRESSES**. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made public at any time. While you may request in your comment to have your personal identifying information withheld from public review, the BLM cannot guarantee that this will occur. The BLM will review and consider all public scoping comments received and will prepare a Scoping Summary Report. The Scoping Summary Report will be used by the BLM to identify issues to be included in the environmental analysis in the EIS, resources and issues that can be dismissed from detailed analysis because they are not present or not affected, and potential alternatives to be analyzed.

### **Request for Identification of Potential Alternatives, Information, and Analyses**

#### **Relevant to the Scope of the Analysis of the Potential Environmental Effects from**

#### **Maintaining Secretary Jewell’s Coal Leasing Moratorium on Pending Federal Coal Lease Applications**

In addition to comments concerning the scope of the environmental analysis, commenters are encouraged to identify relevant information, studies, and analyses that would assist the BLM in taking further action on the moratorium instituted by the Jewell Order and identifying potential alternatives.

### **Lead and Cooperating Agencies**

The BLM is the lead agency for this EIS. Other Federal agencies, State, Tribal, and local governments with special expertise that are interested in participating in the preparation of this EIS should contact the previously mentioned Acting Chief of the Division of Solid Minerals.

### **Decision Maker**

Director, Bureau of Land Management

### **Nature Of Decision to be Made**

Informed by the environmental analysis, the BLM will consider whether and to what extent to continue the coal leasing moratorium imposed by the Jewell Order on January 15, 2016, lifted by the Zinke Order on March 29, 2017, and reinstated by the U.S. District Court of Montana on August 12, 2022.

(Authority: 43 U.S.C. 1701 *et seq.*, 30 U.S.C. 118 *et seq.*, 30 U.S.C. 351 *et seq.*)

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